IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF OCTOBER,
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 1793 of 1999

&

WRIT PETITION NO.1775 of 1999

W.P.No.1793 of 1999

Between:

K.Venkatesh s/o.late Pullaiah,

Aged about 38 years,Lance Naik,

CISF Unit, Singareni Coal Collaries Ltd.,

Head Quarters, S.R.P. Area, CC, Nuspur Post,

Adilabad District.

..... PETITIONER

AND

1.The Director General

Central Industrial Security Force,

Ministry of Home Affairs, Block No.13,

C.G.O. Complex, Lodhi Road,

New Delhi-110 003.

2.The Deputy Inspector General (DIG)

Sough Zone, CISF (South Zone) Headquarters,

Block-D, Rajaji Bhyavan, Besant Road,

Chennai-600 090.

3.The Commandant, CISF Unit, Singareni Coal Collaries Ltd.,

Headquiarters, Bellampalli,

Adilabad District,A.P.

4.The Assistant Commadant/Dist.CISF Unit,

Singareni Coal Collaries Ltd., Head Quarters,

Bellampalli, Adilabad Dist. A.P.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction or Writ more particularly a Writ of Mandamus to declare the orders passed by the 4th Respondent herein i.e. Assistant Commandant, CISF Unit, SCCL, Bellampalli vide Proc V-15015/CISF/SCCL/HQ/DPC/KV/97-10929, dated 2/3 December,1997 which were confirmed by the 3rd Respondent vide Proc. No.:V-11015/SCCL/Disc/HQ/Appeal/KV/98-1102, dated 5-2-1998 which is again confirmed in revision passed by the 2nd Respondent vide Proc.No.V-11015/17/98/L&R (South Zone)/3860,dated 26-6-1998 as illegal and set aside the same.

Counsel for the Petitioner: MR.K.RAJANNA

Counsel for the Respondent No.: MR.KANTHI NARAHARI

WRIT PETITION NO : 1775 of 1999

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..... PETITIONER

AND

1.The Director General,

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New Delhi-110 033.

2.The Deputy Inspector General (DIG),

South Zone,CISF (South Zone) Headquarters,

Block-D.Rajaji Bhavan, Bersant Road,

Chennai-600 090.

3.The Commandant, CISF Unit, Singareni Coal

Collaries Ltd., Head Quarters, Bellampalli,

Adilabad District, A.P.

4.The Assistant Commandant/Disc. CISF Unit,

Singareni Coal Collaries Ltd., Head Quarters,

Bellampalli,Adilabad Dist. A.P.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction or Writ more particularly a Writ of MANDAMUS to declare the action of the Respondents in not giving effect to the promotion orders passed by the 1st Respondent vide proceedings No.E-31014/2/97/Estt.II/4411,dated 6-10-1997 is illegal and arbitrary and further direct the respondents herein to give effect the said orders to the petitioner with immediate effect without reference to the orders passed by the 4th Respondent vide proceedings No.V-15015/CISF/SCCL/HQ/Disc./KV/97/10929, dated 2/3rd December,1997 .

The Court made the following :

Counsel for the Petitioner: Mr.K.Rajanna

Counsel for the respondents: Mr.Kanthi Narahari

COMMON ORDER:

W.P.No.1793 of 1999

This writ petition is filed being aggrieved by the order passed by the Assistant Commandant, CISF Unit, Bellampally dated 2/3rd December,1997, wherein the petitioner was imposed with a penalty of fine to an amount equivalent to one day pay. Aggrieved by the same, he filed an appeal and the same was dismissed by an order dated 5.2.1998. The petitioner at the relevant point of time was working as constable in CISF attached to Assistant Inspector Office at Chennai. He was issued with a charge sheet under Rule 35 of CISF Rules 1969, which reads as under:

> " No.81340172 LNK K Venkatesh while on attachment duty with CISF SZ HQrs., Chennai w.e.f 19.4.97 to 15.10.97 was detailed for general shift duty in the office of DIG/CISF SZ on 2.8.97. During the tenure of his duty, one Calculator-cum-alarm machine was found missing from the chamber of DIG/CISF SZ as informed by AIG/SZ CISF vide his letter No.E-42099/1/97/E(SZ)-8053 dated 24.10.97. The said LNK was responsible for safety and security of the items kept in the chamber of DIG/SZ CISF Chennai. But he failed to do so. The above said act on the part of LNK K.Venkatesh amounts to gross negligence and dereliction of duty. Hence, the charge."

The petitioner submitted his explanation denying the allegations made against him. He further stated that the Constables L.N.K.Vijayen and Harinath were attached to D.I.G's office and they were also responsible for maintenance of the Chamber of D.I.G. On 2-8-1997 constable Harinath was given weekly off and L.N.K. Vijayen was on sick and as such ASI clerk Jayaraman told the petitioner that the D.I.G. is coming on that day and the constable Devighan is not aware about the D.I.G's chamber and, therefore, he should help him. Accordingly, he along with A.S.I clerk Jayaraman helped constable Devighan in cleaning the room by opening the doors and windows. He further asserted that he had for the first time entered into the chamber of D.I.G. and he never entered into the D.I.G.'s chamber prior to this occasion. In fact, S.I./Steno Sumathi and S.I./Steno Vijaya Lakshmi called the Constable Harinath from M.P.T. Madras in the last week of July, 1997 and enquired about the calculator-cum-alarm machine, for which constable Harinath told them that he was not aware of anything about it and would try to return the items. The matter was while pending thus, the D.I.G. was supposed to arrive on 2-8-1997. He also stated that he was on attachment duty at SZ Head Quarters upto 14-10-1997 and nothing was reported

there. Once this is the reply of the petitioner, some semblance of evidence either oral or documentary ought to have been taken into consideration before passing the impugned proceedings. When the petitioner asserted about the missing of the calculator-cum- alarm machine was a dispute even in the last week of July, no effort was made by the disciplinary authority to enquire into the matter except taking some statements of the Stenographers or the A.S.I/clerk Jayaraman etc. Simply rejecting the statement of the petitioner, the impugned order dated 2/3-12-1997 was passed imposing a penalty of fine to an amount equivalent to one day pay. I am of the considered opinion that absolutely there is no evidence of any kind either oral or documentary to come to the conclusion that the petitioner was either responsible for missing of the calculator-cum-alarm machine or otherwise responsible for missing of the same. Therefore, the impugned order passed by the authority is illegal, arbitrary and is liable to be set-aside. Accordingly, the orders passed by the disciplinary authority and the appellate authority, impugned herein, are set aside.

W.P.No.1775 of 1999

On 6th October 1997, the petitioner was promoted from the rank of Lance Naik to the rank of Naik. However, the same was kept in abeyance in view of the disciplinary proceedings initiated as discussed above in writ petition No.1793 of 1999 and in view of the final orders passed in the said disciplinary proceedings on 2/3 December, 1997. Further, the order of promotion of the petitioner dated 6th October 1997 was cancelled on the ground that the penalty was awarded to him after empanelment and before actual promotion.

Though various other grounds were raised, they may not be necessary to go into at this stage in view of the disposal of the writ petition No.1793 of 1999. In view of the findings of this Court in the said writ petition, the writ petition No.1775 of 1995 is liable to be allowed automatically. Therefore, the petitioner is entitled for promotion to the post of Naik from the rank of Lance Naik from 6th October, 1997. Though the

learned Counsel for the respondents contends that the petitioner has already been promoted as Naik in the meanwhile in pursuant to departmental promotion committee constituted for the year 1999 and therefore, there is no cause of action for the petitioner to agitate this matter and the writ petition has become infructuous. I am afraid, I cannot accept the contention raised by the learned Counsel for the respondent. The petitioner's rightful promotion was made with effect from 6th October,1997 and but for the departmental proceedings which were quashed by this Court as stated supra, he would have been entitled for promotion with effect from 6-10-1997. In fact, in view of the allowing of the writ petition No.1793 of 1999, he is entitled for the promotion to the post to Naik with effect from 6th October, 1997 with all consequential benefits like seniority, salary etc.,.

Accordingly, the W.P.No.1793 of 1999 is allowed and W.P.No. 1775 of 1999 is disposed of. No costs.

11.10.2004

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday the eleventh day of October, Two Thousand and Four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

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5.2CD copies

HONOURABLE SRI JUSTICE C.V.RAMULU

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AND

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11.10.2004